prise the essential elements of partnership; (1), Community of interest in some lawful commerce or business, and (2), mutual agency, with general powers within the scope of the business, which powers, however, by agreement between the parties themselves, may be restricted at option, *to the extent of making one the sole agent of the other and of the business.* Applying these principles to the two principal cases it will be found that every essential element is present, except the intention to create a partnership. In fact there was a feature present, which Judge COOLEY does not consider, but which was the basis of the decision in *Waugh* v. *Carver;* namely, that of profit sharing. This necessarily resolves the question into the following proposition; given two states of facts, one containing all the elements of partnership, including intention to create same, the other consisting of all the elements except the intention, the result will be that one is a partnership, while the other is not.

PLEADING—CONTINUANCE.—Defendant moved for a continuance in order to get the attendance or deposition of a certain witness. Plaintiff filed a cross-affidavit, setting out that the witness was her husband, that he would not testify against her, that he could not without her consent, and that she would not consent. The continuance was, however, granted, and plaintiff applied for a writ of mandamus to compel the trial judge to set aside the continuance and proceed with the trial. The writ was denied on the ground that it did not appear to what the witness would testify, and COMPILED LAWS OF MICHIGAN, § 10,213, contained many exceptions which were not negatived by the cross-affidavit. *Snyder* v. *Berrien Circuit Judge,* (Mich. 1913), 142 N. W. 767.

The general rule is that the affidavit in support of the motion for a continuance should state the facts to which the witness will testify, and if it does not, it is not error to refuse a continuance. *People* v. *Jackson,* 111 N. Y. 362; *Hutts* v. *Shoaf,* 88 Ind. 395; *State* v. *Falconer,* 70 Iowa 416; *Commonwealth* v. *Winnemore,* 1 Brewst. (Pa.) 356; *Carthaus* v. *State,* 78 Wis. 560. The above rule would require that the defendant should have stated in his affidavit the facts to which the witness would testify, if present, and then, by reference to the statute it would appear whether, as husband of the plaintiff, the witness could testify against her. If it appears that the witness can not be compelled to testify to the facts set out in the affidavit, a continuance is properly refused. *Dungman* v. *State,* 48 Wis. 485. If the facts are set out, the other party may avoid a continuance by an admission that the witness, if present, would testify to the facts so stated. *Hubbard* v. *Kirby,* 38 Ark. 102; *Chicago City R. Co.* v. *Duffin,* 126 Ill. 100; *Hartford Ins. Co.* v. *Hammond,* 41 Colo. 323; *Pate* v. *Tate,* 72 Ind. 450; *Dial* v. *Valley Mutual Life Association,* 29 S. Car. 581; *Kitchens* v. *Hutchins,* 44 Ga. 620. The granting of a continuance is largely within the discretion of the trial judge. *Barrow* v. *Hill,* 54 U. S. 54; *Watts* v. *Cohn,* 40 Ark. 114; *Maynard* v. *Cleveland,* 76 Ga. 52; *Lewis* v. *Lamphere,* 79 Ill. 187; *De Grote* v. *De Grote,* 175 Pa. St. 50. Mandamus will not ordinarily lie in cases of discretionary acts. *Ex parte McKissock,* 107 Ala. 493; *Board of Com'rs. of Shoshone County* v. *Mayhew,*

5 Idaho 572; *Atkinson* v. *Riley,* 23 Ky. L. Rep. 731; *Whiley* v. *King,* 92 Cal. 431; *State* v. *Steiner* (Wash.), 87 Pac. 66. The Michigan court did not, in their opinion, deny the writ on this ground, but in contradition to the above general rule. The writ of mandamus was granted on a similar set of facts in *Dixon* v. *Field,* 10 Ark. 243.

PROSTITUTION—CONSTRUCTION OF WHITE SLAVE ACT.—The White Slave Act (Act June 25, 1910, c. 395), prohibits the transportation of women in interstate commerce "for the purpose of prostitution or debauchery or any other immoral purposes." The accused persuaded a woman to go from one state to another for the purpose of engaging in illicit intercourse, cohabitation and concubinage with accused. The indictment followed the language of the statute, and to this indictment the accused demurred. *Held,* that illicit cohabitation and concubinage are immoral acts analogous to prostitution, and come well within the letter of the statute, and that the commercial feature need not be present. *United States* v. *Flaspoller* (1913), 205 Fed. 1006.

This case is in accord with, *Hoke* v. *U. S.,* 227 U. S. 308, 33 Sup. Ct. 281, in which case the constitutionality of the act was sustained; and also with the case of *U. S.* v. *Bitty,* 208 U. S. 393, 28 Sup. Ct. 396, 52 U. S. (L. ed.) 543, which case arose under the Act of Feb. 20, 1907, c. 1134, prohibiting importation of any alien woman or girl for purposes defined by practically the identical language used in the White Slave Act. That the commercial feature need not be present to sustain a conviction under the act was also held in the recent *Diggs and Caminetti* cases. But Judge POLLOCK of the United States District Court for Kansas, in a recent case, instructed a defendant to change his plea from guilty to not guilty, intimating that he would instruct the jury to acquit if it did not appear that the girl was taken in another state to commercialize her immorality. From the cases cited above, it is evident that Judge POLLOCK's view, which has attracted a good deal of attention, was erroneous.

SALES—GOODS TO BE MANUFACTURED—REMEDY OF SELLER—POWER TO COMPLETE CONTRACT.—Plaintiff agreed to sell and defendant to buy certain bag holders to be manufactured by plaintiff and delivered to defendant at specified future dates. Before performance due, defendant notified plaintiff he would be unable to use the rest. Plaintiff sues on "open account" including therein 39,307 bags he did not manufacture. *Held,* he cannot sue upon an open account either for the purchase price of goods or for contract price less cost of manufacture. Before an action of this kind will lie, the seller must have put himself in a position where he could deliver and have actually delivered the goods or have stored and retained them for vendee. *American Mfg. Co.* v. *Champion Mfg. Co.* (Ga. App. 1913), 79 S. E. 485.

The ultimate decision here on the facts is correct, inasmuch as plaintiff did not manufacture the holders. But could the plaintiff proceed and manufacture against the express and unequivocal renunciation of the defendant? The court in coming to the conclusion above set forth said "The plaintiff could have declined to agree to the rescission, proceed with the manufacture